

ORIGINAL
FILE

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 29 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Tariff Filing Requirements for) CC Docket No. 92-13
Interstate Common Carriers)

**REPLY COMMENTS OF
AERONAUTICAL RADIO, INC.**

Aeronautical Radio, Inc. ("ARINC"), hereby submits its reply to comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ ARINC agrees with those commentators who have shown that, whatever the outcome of this proceeding, the Commission ought to ensure that users receive the full benefits of their existing and future contractual agreements with interexchange carriers.

ARINC is the communications company of the air transport industry and is owned and managed by the airlines and other aircraft operators. ARINC provides the civil aviation community with a variety of voice and data telecommunications services on a not-for-profit basis and regularly represents industry interests in regulatory and other forums. Many airlines currently have agreements with interexchange carriers ("IXCs") that supplement available tariff terms, conditions and services. These agreements offer important flexibility and security in connection with air transport

¹ FCC 92-35 (released Jan. 28, 1992).

No. of Copies rec'd 075
List A B C D E

industry use of IXC services that should not be jeopardized by any Commission action herein.

For these reasons, ARINC supports those comments which urge the agency to establish appropriate mechanisms for review and rejection of any tariffs required to be filed as a result of this proceeding that would be inconsistent with existing end user contracts.² Moreover, it is equally important that carriers honor their contractual obligations even in those cases where they might voluntarily seek to file tariffs dealing with the subject matter of those agreements. The Commission should therefore undertake a reexamination and strengthening of its "substantial cause" policy for superceding such commitments irrespective of the outcome of this proceeding.³

As TCA correctly explains, it undermines the workings of a purportedly competitive interexchange marketplace for a particular class of market participants to be able to abrogate contracts unilaterally and without penalty while at the same time holding other affected parties to the strict terms of their agreements.⁴ A policy permitting such conduct is an anachronism in a marketplace populated by entities which the

² See, e.g., Comments of Tele-Communications Ass'n, filed March 30, 1992 ("TCA Comments").

³ See RCA American Communications, 86 F.C.C.2d 1197 (1981).

⁴ TCA Comments at 5-6.

Commission has found, by definition, not to be capable of unlawful discrimination in offering their services to the public because of the circumstances of their non-dominant positions in that market. Moreover, it is counterproductive in view of the Commission's frequently expressed goal to promote competition in the provision of telecommunications services.

Accordingly, as TCA proposed, any tariff filings required of IXCs in this proceeding that are inconsistent with underlying contracts should be made on 120-days notice. Such filings should be suspended for the full statutory period while the Commission investigates to determine whether a compelling justification exists for the inconsistencies. Only upon such a demonstration should the changes be found to be just and reasonable. Finally, if the inconsistent tariff ultimately is permitted to go into effect, a customer should be granted the right to terminate its service obligation without liability notwithstanding any contrary tariff or contractual requirement. The agency has already established a similar policy in connection with grandfathered Tariff 12 commitments involving 800 services upon the implementation of number portability.⁵

⁵ Competition in the Interstate Interexchange Marketplace, Memorandum Opinion and Order on Reconsideration, FCC 92-181 (released Apr. 17, 1992), ¶¶ 23-26.

If, on the other hand, the Commission finds that non-dominant IXCs need not file tariffs, it should still impose requirements and standards comparable to those set out above to deal with voluntary tariff filings by IXCs that may be inconsistent with underlying service agreements. Such requirements would facilitate and enhance the operation of a competitive marketplace for interexchange services.

For the foregoing reasons, ARINC urges the Commission to take the actions described above to protect users in their dealings with interexchange carriers.

Respectfully submitted,
AERONAUTICAL RADIO, INC.

By: 

John L. Bartlett
Robert J. Butler

of

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

April 29, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 1992, I caused copies of the foregoing "Reply Comments of Aero-nautical Radio, Inc." to be hand delivered to the following:

Policy and Program Planning
Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Downtown Copy Center
1114 21st Street, N.W.
Suite 140
Washington, D.C. 20036

Nancy A. Betters
Nancy A. Betters